

## BETWEEN THE SPECIES

Review  
of  
*Animals as Persons:  
Essays on the Abolition  
of  
Animal Exploitation*

Gary L. Francione  
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This collection brings together some of Gary Francione's best known and most controversial essays stretching back over the past two decades. The gist of Francione's position is that we need to advance beyond the defenses of animals that were set out by Peter Singer and Tom Regan more than 30 years ago. However, Francione gives us a peculiar mix of the novel and the traditional. Unlike Singer and Regan, he is traditional in his unhesitating committing to sentientism, to the view that "Sentience is necessary to have interests at all" (p.11). This is controversial given that it drives apart the moral concern associated with animal liberation and the kinds of concern associated with eco-activism in the interests of the non-sentient (e.g., eco-systems, trees and so on). But Francione is comparatively untraditional in *rejecting* the view that a defense of animals requires us to show that their ways of thinking are closely akin to our ways of thinking. (A theme pursued in the essay on "Taking Sentience Seriously.")

Francione is again traditional when he accepts Singer and Regan's views about which ethical norms matter, i.e. rights and consequences. He rejects any attempted broadening of ethical norms that seeks to include but *in some sense* go beyond animal rights. (A theme pursued in the review essay "Ecofeminism and Animal Rights.") And he endorses the Singer and Regan position that, when a serious choice must be made, we may have non-prejudicial grounds for favoring humans over non-humans. He also appeals, just as Singer and Regan do, to the argument from marginal cases. (This is a feature of Francione's writing that is sometimes overlooked but it can be found on pages 12 and 64 of the present volume.) His essays are not *in these respects* an attempt to move things on towards a revised ethical standpoint.

## TONY MILLIGAN

What Francione provides instead is a distinctive political or politico-legal response to the plight of animals. It might even be unfair to Francione to evaluate his writings as if he were carrying out some other task, or more especially the same task as Singer and Regan but without a similar depth of argumentation. Because of this, I will suggest that we have some reason to allow Francione extra leeway when his distinctions or background arguments don't quite hold together in an ideal manner. Politics requires, and effective political strategy sometimes necessitates, an informed rhetoric that favors big ideas and striking contrasts which do not always look so clear-cut upon a closer analytic interrogation. Painting with broad brushstrokes works well as a provisional, rough-and-ready call for individuals to take a political stand and at times it is simply not intended as a final and detailed picture.

A challenge to the legal standing of animals as property is the cornerstone of Francione's position. He claims that the recognition of the intrinsic value of animals is not just in tension with, but is absolutely incompatible with, viewing and treating animals in this way. Any serious commitment to animal liberation must *therefore* require a commitment to end their classification as property. The big distinction that dovetails with this focus is a contrast between those who do not believe that animals should be property ("liberationists") and those who accept their property standing or who couple a commitment to animal liberation with a further belief that it may be assisted by incremental changes in animal welfare. If you hold to the latter approach then you are, in Francione's terms, a "new welfarist" and not a "liberationist" (p.2). This contrast, familiar in animal rights circles, is normative as well as descriptive. It presupposes that we ought to be "liberationists." It is also a hard and fast binary pairing of a sort that may make us uneasy. It supports

the claim that those in the two different camps belong, in some sense to two different movements, a view that has been seen as divisive, or divisive *in the wrong way*: it takes the small minority who are committed to animal liberation and turns them into an even smaller minority.

I do not think that Francione is presuming (implausibly) that most vegetarians or vegans actually happen to hold any explicit position on such matters. Most have probably never heard of Francione or his “new welfarist” versus “liberationist” contrast. (And it is still not a part of the material covered in many undergraduate courses on applied ethics that deal with the standing of animals. It should be, but it isn’t.) What I will suggest is that, from Francione’s point of view, the millions of vegetarians and vegans who hold no particular position about ultimate goals, or about how they might be attained, are in fact, by default, “welfarists” or “new welfarists” and so fall on the wrong side of the binary contrast. But this may make them precisely the individuals that Francione wants, in the first instance, to address and to win over.

As a familiar critical point about Francione’s contrast, it is set up in an unsettling way because it also represents some individuals with a clear and perhaps dedicated commitment to animal liberation as “new welfarists” rather than “liberationists.” Even so, the political strategy within which the distinction plays a role is the rejection of time-wasting welfare measures as measures that do not further a recognition of the intrinsic value of animals. When it comes to recognizing intrinsic value, Francione holds that few things actually make a difference: propagandizing is one, and the extension of veganism is another, but ultimately the ending of the property status of animals is what matters.

Here, we might wonder about whether matters have to be so clear cut. However, with various empirical examples to back up his case, Francione argues that the law *always* favors human interests over non-human interests. While animal welfare changes do occur they do so always in the interests of humans (often the economic interests of humans) rather than in the interests of animals. And so there simply is no legal recognition of significant animal interests and nothing that would count as *moving closer to* such recognition while still regarding animals as property.

It is at points like this that I wonder about how tidy a separation we can make between Francione as a political strategist and Francione as someone who *is* trying to set up a plausible ethical argument of a far more general sort. What worries me, in particular, is that this does look like an attempted ethical exploration of the concept of property, and the beginnings of an exploration of the concept of intrinsic value, rather than an empirical generalization about people who view animals as instances of the former tending not to view them as having any of the latter. And this conceptual analysis does seem to form part of an argument. What confuses me a little, when I reflect upon what Francione is trying to do is that this is not a particularly good argument. Francione's claims do not come close to supporting his rather strong conclusion. And this makes me wonder about whether I have fully understood what he is up to. (Perhaps I have missed something important, something that would make everything fall into place.) Pointing out that the law always puts human interests first (even if correct) gives us reasons to say that the law endorses a *greater value thesis* (that humans are always and everywhere more valuable and more important than animals). But it is not nearly enough to support Francione's claim that the law endorses a *sole value thesis* (that

*only* humans have intrinsic value). And so the evidence that he gives, about how law invariably functions, is not strictly relevant to the conclusion.

But here, perhaps, I am again falling into precisely the trap that I have set out to avoid, perhaps I am making the mistake of writing about Francione as if he was trying to do what Singer and Regan do (but managing it less effectively, less proficiently). However, this concern too may be a little unfair. It may be unfair to Francione's scholarship to ignore the fact that there really is much more here than political strategy, even if the direct underpinning of a strategy happens to be his dominant concern. There is certainly an argument of a sort, one which is shaped by legal norms of argumentation (norms which draw from Francione's legal background) and these are in many ways different from the analytic philosophical norms of argumentation that shape the way of writing in Singer and, even more so, Regan. Again, perhaps it is my understanding of the position, and what is *taken for granted*, that is flawed.

At the very least, Francione does try to do something to bridge the gap between what is actually shown and the strong conclusion that he want us to support, the conclusion that viewing animals as property and viewing animals as intrinsically valuable cannot ever go together. To bridge the gap he appeals to an analogy between animal ownership and slavery in the ante-bellum South. And here, again, the appeal is of a fairly broad sort that is well-adapted to political debate but which glides over the significantly different positions of different sorts of slaves such as field-hands compared to house-slaves. Again, fairly or unfairly, I am tempted to look beyond political strategy and to point out that, to be at all plausible, the strong claim that slavery *excludes* the recognition of a lessened and diminished

but nonetheless real intrinsic value would have to depend upon more than a single streamlined American case. Slavery covers a lot of territory and a lot of institutions and it is far from obvious, once we cast our eyes a bit further and wider, that the recognition of property standing and of significant intrinsic value have always been incompatible. Ancient Roman slavery would, for example, have to be considered as an obvious problem case (perhaps more so than slavery in the ante-Bellum South) given the steady transition of household slaves into client freedmen in the Roman *urbs* and given the fact that in antiquity, at some times and in some places, slaves had sanctuary rights in temples while still remaining slaves, hence someone else's property.

This looks suspiciously like support for the view that being property may be deplorable but it does not necessarily eclipse being seen as intrinsically valuable *to an extent*. In more contemporary times, the fact that companion animals are legally classified as property, and are at least formally regarded as such by the courts (if not by their "owners") again does not seem to have prevented some recent divorce cases in the US from involving custody disputes about "pets," in which rival parties have been called upon to make legally-significant claims about what is in the best interests of the animals concerned.

My point here is that Francione acknowledges, but does not do justice to the fact that while property may not be a legal fiction (as property skeptics suggest) it is also *not* absolute and that it is standardly qualified in various ways *including* (and this is something Francione absolutely and explicitly rejects) recognition, in the case of animals, that the property in question is of such a nature that it has interests that the law ought to be responsive to. That is to say, it does no good to assert that *property can't have interests* as if it were a conceptual truth.

TONY MILLIGAN

This being the case, it is extremely difficult to sustain the view that *no* welfare changes can *ever* be linked to the promotion of a greater legal (or wider) recognition of the intrinsic value of animals. I have, I confess, in the course of looking over this collection of essays, entirely given up reading Francione as an effective defender of this thesis. Perhaps it can be defended in some significantly different way, but I have reservations about even this. (I do not know what a convincing defense of the thesis would look like.) Nonetheless, what Francione does marvelously well, is to direct the reader's attention to the genuine dangers of regarding animals as property and to the need for a strategy to move things forward beyond this degrading subordination. In some way that I cannot quite fathom he also does this better than almost any other author that I know. This is not, of course, praise of a sort that Francione will want, but neither is it faint or damning.